

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

| | | |
|-------------------------------|------------|-------------------|
| TOWN OF LEXINGTON, |) | |
| |) | |
| | Plaintiff, | |
| |) | |
| |) | C.A. No. 13-12990 |
| v. |) | |
| |) | |
| FERRARA FIRE APPARATUS, INC., |) | |
| |) | |
| | Defendant. | |
| |) | |
| |) | |
| |) | |
| |) | |

**FERRARA FIRE APPARATUS, INC.’S
NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT COURT**

Pursuant to 28 U.S.C. § 1441, Defendant Ferrara Fire Apparatus, Inc. (“Ferrara Fire”) hereby removes the action styled as *Town of Lexington v. Ferrara Fire Apparatus, Inc.*, Civ. Action No. MICV2013-04828, currently pending in Superior Court of the Commonwealth of Massachusetts in and for Middlesex County, to the United States District Court for the District of Massachusetts, Civil Section. For the reasons set forth below, removal of this state court action is proper under 28 U.S.C. §§ 1332, 1441 and 1446.

I. THE STATE COURT ACTION

1. On November 5, 2013, Plaintiff Town of Lexington (the “Town”) filed its complaint (Civ. Action No. MICV2013-04828) in Massachusetts Superior Court, Middlesex County, against Ferrara Fire (“Complaint”).¹ The Town mailed a Summons and a copy of the

¹ Nine days later, the Town separately filed three exhibits which were “inadvertently omitted” from the Complaint. These exhibits were not attached to the copy of the Complaint initially mailed to Ferrara Fire.

Complaint to Ferrara Fire on November 12, 2013. The Summons and a copy of the Complaint including exhibits are attached as **Exhibits A and B**, respectively.

2. Ferrara Fire has not answered or otherwise responded to the Complaint. Further, Ferrara Fire has not appeared in the state court action. The Town's Complaint alleges causes of action against Ferrara Fire for breach of contract, breach of express warranty, breach of implied warranties, violation of M.G.L. c. 93A, § 9, UCC revocation of acceptance, and indemnification.

II. NOTICE OF REMOVAL IS TIMELY FILED

3. Ferrara Fire first received a copy of the Town's Summons and Complaint on November 12, 2013. Ferrara Fire had no prior notice of the Town's lawsuit. This Notice of Removal is filed within thirty (30) days of Ferrara Fire's receipt of the Complaint and is therefore timely under 28 U.S.C. § 1446(b).

III. BASIS FOR REMOVAL JURISDICTION

4. Removal of this action is proper under 28 U.S.C. § 1441 because it is a civil action brought in state court and the federal courts have original jurisdiction over the subject matter pursuant to 28 U.S.C. § 1332. Specifically, removal is proper because there is complete diversity of citizenship between Plaintiff Town and Defendant Ferrara Fire and the amount in controversy exceeds \$75,000 excluding interest, costs and attorneys' fees.

A. Parties

5. Plaintiff Town of Lexington is a municipality who is located in the Commonwealth of Massachusetts. Thus, the Town is a citizen of Massachusetts for purposes of diversity of citizenship.

6. Defendant Ferrara Fire is a company who is incorporated and has its principal place of business in the State of Louisiana. Thus, Ferrara Fire is a citizen of Louisiana for purposes of diversity of citizenship.

7. Accordingly, complete diversity of citizenship exists between Plaintiff Town and Defendant Ferrara Fire.

B. Amount in Controversy

8. The Town specifically claims damages totaling approximately \$999,034. *See* Complaint, ¶45. Thus, the Town's claims exceed the sum of \$75,000.

IV. VENUE IS PROPER

9. Venue is proper in the United States District Court for the District of Massachusetts under 28 U.S.C. § 101 and 1441(a) because this district embraces the place in which the removed action has been pending.

V. JURY DEMAND

10. Plaintiff Town demanded a jury in the state court action.

VI. COMPLIANCE WITH 28 U.S.C. § 1446(d) AND LOCAL RULE 81.1

11. Pursuant to 28 U.S.C. § 1441(d), Defendant Ferrara Fire shall give written notice of the filing of this removal to Plaintiff Town and shall file a copy of this notice of removal with the Clerk of the Superior Court for Middlesex County.

12. Pursuant to Rule 81.1 of the Local Rules of the United States District Court for the District of Massachusetts, Defendant Ferrara Fire shall request of the Clerk of the Superior Court for Middlesex County, certified or attested copies of all records and proceedings in the state court and certified or attested copies of all docket entries therein, and shall file the same with this Court within twenty-eight (28) days after the filing of this Notice of Removal.

13. Pursuant to Local Rule, the civil action cover sheet and category sheet are attached as **Exhibits C and D**, respectively.

WHEREFORE, Defendant Ferrara Fire hereby removes the above-entitled action now pending in the Superior Court of the Commonwealth of Massachusetts in and for Middlesex County to this United State District Court.

Dated: November 21, 2013

Respectfully submitted,

Defendant
FERRARA FIRE APPARATUS, INC.,
By its attorney,

ZELLE HOFMANN VOELBEL & MASON LLP

/s/ Seth V. Jackson
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing, filed through the Electronic Case Filing System, will be sent via e-mail and first class mail to David S. Mackey, Nina L. Pickering-Cook, and Jessica A. Wall of Anderson & Krieger, LLP, One Canal Park, Suite 200, Cambridge, MA 02141, on this 21st day of November, 2013.

/s/ Seth V. Jackson
Seth V. Jackson